ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR08-786

MICHAEL ADON THOMPSON, APPELLANT	**Opinion Delivered** 18 MARCH 2009
V.	APPEAL FROM THE ASHLEY COUNTY CIRCUIT COURT, [NO. CR07-157-1]
	THE HONORABLE DON EDWARD GLOVER, JUDGE
STATE OF ARKANSAS, APPELLEE	AFFIRMED

D.P. MARSHALL JR., Judge

An Ashley County jury convicted Michael Thompson of two counts of delivering cocaine. He was sentenced to thirty years' imprisonment and ordered to pay more than $6,000.00 in fines. Thompson now challenges the sufficiency of the evidence and argues that the circuit court abused its discretion by refusing to admonish the jury during the prosecutor's closing.

In deciding Thompson's sufficiency challenge, we view the evidence supporting his conviction in the light most favorable to the State. *Benjamin v. State*, 102 Ark. App. 309, 310–11, ___ S.W.3d ___, ___ (2008). Thompson first argues that there was insufficient evidence to convict him because no one identified him in court. True, no witness pointed at Watson. But "[i]dentification of a defendant can be inferred from all the facts and circumstances that are in evidence." *Womack v. State*, 301 Ark. 193,

198–99, 783 S.W.2d 33, 36 (1990).

Daniel Watson, the investigating officer, made a hidden-camera video of the controlled buys. During the trial, the State introduced the video and still pictures taken from it. Watson testified that the video showed the informant and Thompson having a conversation partly about buying drugs. Watson further testified that after the conversation depicted on the video, the informant returned with the drugs he had purchased from Thompson. The informant testified that the person depicted on the video and in the pictures was the person who sold him the drugs. From these facts and circumstances, the jury could conclude, without speculation or conjecture, that Thompson was the person in the video who sold the informant cocaine. *Ibid*.

Thompson next argues that there was insufficient evidence because the informant's wife accompanied the informant on one of the buys, the police did not search her beforehand, and she (rather than Thompson) could have been the cocaine's source. This argument is not preserved for our review. Thompson's directed-verdict motion needed to be specific to apprise the circuit court of the missing elements in the State's proof. Ark. R. Crim. P. 33.1(c); *Tryon v. State*, 371 Ark. 25, 34–35, 263 S.W.3d 475, 483 (2007). Here, Thompson's attorney said that: "[T]he State has failed to make a prima facie case that a transaction took place to prove that my client is guilty of delivery." There was no mention of the police's failure to search the informant's wife and how that failure affected the proof. Thompson thus waived this point. *Tryon*, 371 Ark. at 34, 263 S.W.3d at 483.

Even had Thompson preserved his argument about the informant's wife, substantial evidence supports his convictions. The informant testified in detail about purchasing cocaine from Thompson on two occasions. Before each buy, Officer Watson patted the informant down, searched his vehicle, and installed two hidden cameras in the vehicle. The informant's wife accompanied him in the car for one of the buys. Watson acknowledged that he did not search her. Watson also testified, however, that he had reviewed the video carefully and, in his opinion, the informant's wife was not carrying any drugs. Watson testified that the video showed an exchange of some kind. When the informant returned after the purchase, he handed over the cocaine to Watson, who then searched the informant and the informant's vehicle for the buy money and any other contraband. Watson did not find anything during either of the post-buy searches. The jury saw the video-tape encounters and the still photos. All this evidence allowed the jury to reach its conclusion without speculating about the crime. Ark. Code Ann. § 5-64-401 (Supp. 2007); *Navarro v. State*, 371 Ark. 179, 186–87, 264 S.W.3d 530, 535–36 (2007).

Last, Thompson argues that the circuit court abused its discretion by refusing to admonish the jury during the prosecutor's closing argument. The prosecutor said "[t]he only way we didn't prove our case, because there's been no evidence put on by the defense, there's no evidence in this case other than what was put forth here." Thompson's attorney interrupted and asked for a mistrial, arguing that the prosecutor's statement was a comment on Thompson's decision not to testify. The prosecutor said

that, if he had have been allowed to finish, he would have said that the defense put on no evidence rebutting the State's witnesses' testimony or challenging their credibility. The court asked Thompson's attorney whether he wanted a precautionary instruction. He responded that he did, if the court was willing to give one, but continued to press the mistrial issue. The court eventually denied the mistrial motion and never admonished the jury.

The State argues that this argument is not preserved because Thompson never definitively asked the judge to admonish the jury. We disagree. Thompson's request was definite enough to preserve the point. The prosecutor's comment, however, was not poisonous enough to warrant an admonition. First, a prosecutor may mention the fact that the State's evidence is undisputed. *Richmond v. State*, 320 Ark. 566, 572, 899 S.W.2d 64, 67–68 (1995). Second, we agree with the circuit court that the prosecutor made a "generic statement." This was not one of those rare circumstances where a prosecutor's closing argument appealed to the jurors' passions, thereby requiring reversal. *Tate v. State*, 367 Ark. 576, 582–83, 242 S.W.3d 254, 259–60 (2006). We see no abuse of discretion in the lack of an admonition. *Tate*, 367 Ark. at 582, 242 S.W.3d at 260.

Affirmed.

ROBBINS and BROWN, JJ., agree.